

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. No. \_\_\_\_\_

EARTHSOURCE, INC.,

Plaintiff

v.

THE TOWN OF RAYNHAM,  
GORDON D. LUCIANO,  
DONALD L. MCKINNON,  
RAYMOND W. PLATT,  
individually & as members of  
the Raynham Board of Health,

Defendants

DEFENDANTS' MOTION  
TO ENLARGE TIME TO  
RESPOND TO COMPLAINT

**04 CV 10373 REK**

Now comes the defendants, Town of Raynham, Gordon D. Luciano, Donald L. McKinnon, Raymond W. Platt, individually and as members of the Raynham Board of Health, and pursuant to Fed.R.Civ.P. 6, hereby move that the Court to enlarge the time for the filing of the defendants' response to the Complaint until March 20, 2004.

MEMORANDUM OF REASONS

As grounds for their Motion to Enlarge Time to Respond to the Complaint, the defendants state the following:

1. The defendants in this matter are the Town of Raynham Board of Health (the "Board of Health"), a governmental body as defined pursuant to the provisions of G.L. c. 39, § 23A, as well as the individual members of said Board.

2. The parties are presently engaged in settlement discussions aimed at resolution of this action without further litigation and in furtherance of the interests of judicial economy.

3. The additional time requested by the defendants' counsel is necessitated by the fact that any consideration of further settlement offers must be undertaken by both the Board of Health and the Town of Raynham Board of Sewer Commissioners (the "Sewer Commissioners"), a separately elected board at meetings noticed and held in accordance with the provisions of the Open Meeting Law, G.L. c. 39, § 23B.

4. Further, where the members of the Board of Health are named individually as defendants, adequate time is necessary to confer and advise the individual defendants with regard to potential issues of conflict of interest and joint representation and to obtain consent from each of the individual defendants to multiple representation.

5. The plaintiff's counsel informally allowed for an extension of time of a few days without further definition.

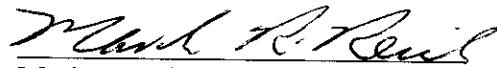
6. The extension of time allowed by the plaintiff's counsel is insufficient to allow for the separate elected boards to meet as necessary to consider further settlement negotiations, or, in the alternative, to respond to the complaint by dispositive motion or answer.

7. A pleading in response to the complaint was due to be filed on February 15, 2004. The Board of Health served a motion to enlarge time upon the plaintiff on February 20, 2004 in accordance with the procedure mandated by Superior Court Rule 9A. In light of the differing procedure in U.S. District Court, the Board of Health is filing its motion directly with the Court.

WHEREFORE, the defendants respectfully request that this Court allow their Motion to Enlarge Time to Respond, up to and including March 20, 2004.

DEFENDANTS,  
THE TOWN OF RAYNHAM,  
GORDON D. LUCIANO,  
DONALD L. MCKINNON,  
RAYMOND W. PLATT

By their attorneys,  
appearing specially for the limited purpose  
of this motion,



Mark R. Reich (BBO #553212)  
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document  
was served upon the attorney of record for each other  
party by (hand) (mail) on 2/25/04

